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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamlining the Commission's)
Antenna Structure Clearance Program)
)
and)
)
Revision of Part 17 of the)
Commission's Rules Concerning)
Construction, Marking and)
Lighting of Antenna Structures)

WT Docket No. 95-5

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COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters ("NAB")¹ hereby submits these comments in response to the Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding.² In this Notice the Commission proposes to streamline the current antenna structure clearance procedures by replacing them with a straightforward, uniform registration process, beginning January 1, 1996.

NAB favors the essential elements of this new regulatory approach to towers used by broadcasters and other communications enterprises. We also believe this system should be implemented "by state," with filing windows for registration set on a state-by-state basis.

¹ NAB is a nonprofit, incorporated association of television and radio stations and networks which serves and represents the American broadcast industry.

² See Notice in WT Docket No. 95-5, FCC 95-16, released January 20, 1995.

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However, NAB urges the Commission to clarify or amend certain aspects of the proposed new process in order to create an equitable environment for the broadcast community and for others under the Commission's jurisdiction. That is, and as set forth below in detail, we believe the Commission should adjust its proposed rules to ensure that its existing regulatees will enjoy true benefits from these rule changes and, in the process, will not be subjected to new regulatory demands or to new rule enforcement jeopardy.

In addition, NAB supports -- with a few caveats -- revising Part 17 of the Commission's Rules to keep up with Federal Aviation Administration (FAA) recommendations. We also agree with the Commission's construction and implementation of statutory language to hold structure owners primarily responsible for compliance with Commission painting and lighting specifications.

The proposed registration process would remove most, if not all, of the existing burdens which individual licensees and permittees must bear under the existing system. Rather, the burden of registering and maintaining (consistent with FCC rules) antenna structures would be placed solely on a single entity -- the structure owner. In addition, all information regarding painting and lighting, as well as station operating parameters and licensee information, will be contained in a common database, as opposed to the multiple databases currently used. This will make access to information more efficient for the FCC, regulatees and the public. As such, NAB supports this new process because it will centralize and thus simplify the current tower clearance procedures.

However, several aspects of the Commission's proposals are at odds with the overall goal of reducing costs and burdens and attaining a higher degree of efficiency and equity in the tower registration and rule enforcement process. It is on these matters that NAB offers comment and recommendations.

II. NO NEW FEES SHOULD ACCOMPANY THE NEW REGISTRATION PROCESS

Under these new proposals, at a multi-use site only the tower owner would be required to file with the Commission for an application or notification for a change in antenna structure height, painting or lighting, or for dismantling of the antenna structure.³ As a result of fewer entities having to register, the Commission expects that a 12-1 reduction in filings will occur, thus lowering the cost of the Commission's operation.⁴

In light of these cost savings, the Commission should not consider imposing new registration fees on tower owners, including broadcasters who own their own towers.⁵ Moreover, these cost savings should provide an incentive for the Commission to lower the "regulatory fees" that broadcasters and others currently pay to cover the Commission's costs for the existing tower registration program, among other FCC regulatory activities.

III. SINGLE REGISTRATION OF MULTIPLE TOWER AM BROADCASTERS

The Commission seeks comment regarding the effects of this proposal on services that do not specify each antenna site on the authorization.⁶ Under the new proposal, a separate registration would be required for each structure in the licensed service area.⁷ NAB urges that AM broadcast stations employing directional arrays (involving multiple antenna structures) not be required to fill out a separate

³ Id., ¶7.

⁴ Id. at n.24.

⁵ In the Notice the Commission does seek comment on a new fee requirement. See Notice supra note 2 at ¶16(e).

⁶ See Notice, supra note 2, ¶ 12.

⁷ Id.

application for each of the multiple antenna structures.⁸ The Commission should create a single registration form which encompasses all of the towers of an AM directional system.

IV. **LIABILITY FOR RULE VIOLATIONS**

As discussed in the Notice, while the Commission is proposing to hold the owners primarily responsible for the installation and maintenance of painting and/or lighting for each antenna structure, licensees and permittees may still be responsible where “reliance on the owner proves ineffective.”⁹ Although NAB does not take issue with the Commission’s proposal to impose “default” responsibility on licensees/permittees, we urge that specific procedures requiring timely notice and process be instituted.¹⁰ This will help ensure that licensees/permittees are sufficiently warned regarding their pending liability for maintenance (including lighting and marking) of the antenna structure.

Under the new proposal, structure owners who fail to comply with the requirements set forth in Part 17 of the Commission’s Rules may be subject to administrative sanctions. In order to better ensure non-licensee compliance, NAB suggests that the Commission consider the imposition of higher fines for rule violations caused by non-licensee tower owners than for licensee owners.

⁸ Furthermore, should the Commission decide to impose a registration fee, an AM station should only pay one fee for all of the antenna structures within its array.

⁹ See Notice, *supra* note 2, ¶21.

¹⁰ Broadcasters who lawfully relied upon third party non-licensee tower owners to comply with the Commission’s rules should be given notice that, within some reasonable, definite time period, they will become responsible for rule compliance if the tower owner defaults on its obligation to comply with the rules. Section 1.80(d) of the Commission’s Rules requires that the antenna structure owner be given notice of its obligation prior to the issuance of a forfeiture penalty. The Commission should adopt similar procedures for notification of licensees and permittees who may be held liable for tower maintenance as a result of the tower owner’s default.

Licensees have greater incentive to comply with all Commission rules than do non-licensees. In addition to having a limited number of regulatory responsibilities, non-licensees interface with the Commission solely with regard to tower structures. As a result, these owners have only a monetary fine at stake for non-compliance. In stark contrast, licensee owners have the key to their livelihood at stake -- their operating licenses.

To compensate for these differences in regulatory responsibility -- and to better ensure overall compliance with tower regulations -- non-licensees should be required to pay more for non-compliance.¹¹

V. DISCOVERY OF INCORRECT COORDINATES

Clearly, NAB supports the FCC goal of absolute accuracy regarding antenna structure location.¹² There would be no additional burden on broadcasters in requiring specification of antenna location to the nearest second and height to the nearest meter.

However, it may be that, during the initial tower registration process, it is determined that a Commission licensee is transmitting from geographical coordinates that are close to, but nevertheless different from, the coordinates specified on its instrument of license. In this event, the licensee should be allowed to continue operating from its existing coordinates.

Discrepancies in geographical coordinates are likely to occur, and for a number of reasons. A tower owner that uses a GPS receiver to identify the coordinates for a tower may discover

¹¹ In a separate proceeding, the FCC proposes to revise its base fine amounts for various rule violations. In comments to be submitted on March 27, 1995, NAB will address the levels for various rule violations, including those for tower maintenance, lighting and marking. See Notice of Proposed Rule Making in CI Docket No. 95-6, FCC 95-24, released February 10, 1995.

¹² See Notice, *supra* note 2, ¶ 16(i).

that the GPS receiver is more accurate than the procedure used previously. Also, typographical errors may have caused some tower records to include inaccurate coordinates.

Such discrepancies may result in some antennas being several hundred meters closer to potential sources and/or victims of interference than was previously believed. Should this occur, any affected Commission licensee should not be forced to modify its facilities. The fact that the Commission licensee has coexisted with neighboring users of the radio spectrum prior to the discovery of any such coordinate discrepancy generally should weigh more heavily than any predictions, based on radio propagation models, that operation from the licensee's actual coordinates will result in unacceptable levels of interference.

Because the structure has effectively coexisted with neighboring users of the radio spectrum prior to the discovery of any discrepancy, NAB suggests that the existing location should be grandfathered permanently, or at least for a period of 10 years. This will avoid severe economic and operational burdens on licensees which otherwise would result from forcing Commission licensees to relocate their towers. In addition, it will ensure continued service in the public interest.

VI. ENVIRONMENTAL OBLIGATIONS SHOULD BE SHARED.

When crafting final rules in this proceeding, the Commission should revise its environmental rules (see 47 CFR §§ 1.1301-1.1319) to clearly define and differentiate between the responsibilities of licensees and non-licensee tower owners. A clear understanding is necessary to avoid costly disputes between these parties, and to help the Commission more efficiently enforce its environmental regulations.

NAB believes it must be the responsibility of the tower owner to ascertain the environmental impact of, for example, wetland fill, migratory bird paths, or water diversion associated with the construction of a tower. It would just as clearly be the tower owner's responsibility to

determine the environmental impact of high intensity white lighting in a residential neighborhood. On the other hand, it clearly should be the licensee's responsibility to determine the biological impact of radio frequency emissions from the tower on workers and on the general public.

VII. IMPOSING LIGHTING/MARKING RULES ON VOLUNTARILY LIT TOWERS

In the Notice the Commission proposes that "owners whose antenna structures do not require lighting, but choose to voluntarily light their structures, will be required to follow the specifications set forth in Part 17."¹³ NAB believes this strict requirement is overbroad and unnecessary. It would needlessly burden tower owners who simply adorn their towers with station call letters or advertisements, or who, for example, install workers' lights above an AM tuning shack.

NAB urges the Commission not to impose any new requirements on tower owners who voluntarily light their towers. Aviators already know that, except for areas around airports, unlit towers can be as high as 200 feet. Therefore, they should not fly below that altitude. If a plane is approaching a single light, half way up a 190 foot tower, the pilot can easily avoid a collision by simply ensuring that his or her altitude is greater than 200 feet. In fact, in such a situation, the single light in the middle of the tower is better than no light at all, because it alerts the pilot to the fact that a tower is there. However, under the FCC's new proposal, the tower owner may be inclined to simply remove the lighting, in order to avoid the unfair burden of compliance with Part 17. This unfortunate result would make flying significantly more dangerous for low flying aircraft.

¹³ Id. at ¶ 22.

VIII. FAA RECOMMENDATIONS AND ADVISORY CIRCULARS

In the Notice the Commission addresses the relationship between its rules and policies and those adopted and enforced by the FAA. While NAB recognizes the nexus between the rules of these agencies, we caution against the Commission adopting a regulatory stance that would result in the FCC showing regulatory deference to the FAA. Too often -- especially in recent years -- the two agencies have taken virtually opposite views on important issues dealing with tower use and antenna emissions.¹⁴ Thus, and especially in view of this history of regulatory conflict, it would be unwise for the FCC to have its rules automatically amended to incorporate the FAA regulatory change.

As such, NAB agrees that the Commission should conduct its own notice-and-comment rulemaking proceedings whenever the FCC perceives a need to incorporate changes in FAA recommendations or circulars into the Commission's own regulatory scheme. Indeed, some of these FCC-conducted proceedings may well result in a conclusion not to adopt -- in its own rules -- a regulatory position taken in an FAA recommendation or "advisory circular."

Concerning the FAA Advisory Circular AC 70/7460-1H, which recommends, among other things, dual lamps in mid-level beacons, we agree with the Commission's proposal to grandfather existing towers for a period of ten years, to and including January 1, 2006. Such a grandfathering approach is an appropriate regulatory balance of air navigation concerns and cost considerations.

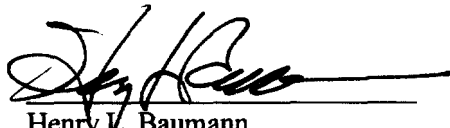
¹⁴ For example, the Commission has initiated a rule making aimed at imposing receiver standards in aircraft navigation radios. (See Notice of Proposed Rule Making in PR Docket No. 93-199, 8 FCC Rcd 4763 (1993).) The FCC took this step in light of the FAA's use of an air navigation interference prediction computer model that shows air navigation interference -- from FM radio stations -- where none exists. Correspondingly, the FCC has filed comments in an FAA rule making (See Notice of Proposed Rule Making in Rules Docket (AGC - 10) No. 26305, 55 Fed. Reg. 31, 772 (August 3, 1990)), protesting FAA proposals to expand its regulatory program vis-a-vis communications towers and antennas. See Comments of the Staff of the FCC in Rules Docket (AGC-10) No. 26305, filed December 31, 1990.

X. CONCLUSION

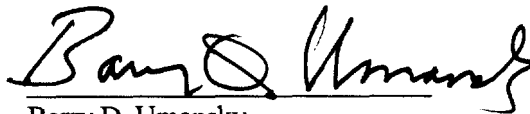
NAB generally favors the Commission's proposal to implement a new, uniform registration process, making antenna structure owners primarily responsible for the maintenance and registration of towers. This new process will bring greater efficiency to tower clearance procedures, as well as create an equitable environment for the broadcast community. However, the Commission must modify certain aspects of the new registration process in order to attain its goals of fairness and efficiency. Similarly, NAB supports revising Part 17 of the Commission's rules to harmonize with the FAA's recommendations -- so long as certain cautions are adopted -- and the revision of rules to hold antenna structure owners primarily responsible for tower compliance.

Respectfully submitted,

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March 21, 1995